

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PETER WILSON,
Plaintiff,

vs.

ROSEANNE CAMPBELL, Warden,
Defendants.

No. C 07-6136 JSW (PR)

ORDER OF TRANSFER

Plaintiff, a prisoner of the State of California, currently incarcerated at Mule Creek State Prison in Ione, California, has filed this civil rights action challenging prison authorities denying him access to his legal materials, thereby interfering with his ability to file a notice of appeal of the denial of his habeas petition in this Court. Plaintiff has filed a motion seeking leave to proceed *in forma pauperis* (docket no. 2).

While Plaintiff included on the forms for this action the civil case number from his pending habeas action, it appears that he actually intended to file a new case regarding the interference by prison officials because he filed it on a form complaint for a civil rights action. If this was not his intention, he may file a notice of voluntary dismissal of the instant action in the court to which it is transferred. However, while in the section for requested relief, Plaintiff requests an extension of time on his habeas corpus petition, he cannot do so in this new action. If Plaintiff wishes to request an extension or other relief on that case, he may do so by filing such a motion on his pending habeas case, Case No. C 06-2242 JSW (PR).


When jurisdiction is not founded solely on diversity, venue is proper in the district in which (1) any defendant resides, if all of the defendants reside in the same

1 state, (2) the district in which a substantial part of the events or omissions giving rise to
2 the claim occurred, or a substantial part of property that is the subject of the action is
3 situated, or (3) a judicial district in which any defendant may be found, if there is no
4 district in which the action may otherwise be brought. 28 U.S.C. § 1391(b). Where a
5 case is filed in the wrong venue, the district court has the discretion either to dismiss the
6 case or transfer it to the proper federal court “in the interest of justice.” 28 U.S.C. §
7 1406(a). Venue may be raised by the court sua sponte where the defendant has not yet
8 filed a responsive pleading and the time for doing so has not run. *Costlow v. Weeks*, 790
9 F.2d 1486, 1488 (9th Cir. 1986).

10 Plaintiff complains about conditions of confinement at a prison located in Amador
11 County, within the venue of the Eastern District of California. *See* 28 U.S.C. § 84.
12 Therefore, the Court will transfer this action to the United States District Court for the
13 Eastern District of California. Accordingly, IT IS ORDERED in the interest of justice,
14 and pursuant to 28 U.S.C. § 1406(a), that this action be TRANSFERRED to the United
15 States District Court for the Eastern District of California. In light of the transfer, this
16 Court will not resolve Plaintiff’s pending motion. The Clerk of the Court shall transfer
17 this matter forthwith.

18 IT IS SO ORDERED.

19 DATED: December 10, 2007

20 
21 JEFFREY S. WHITE
22 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
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PETER WILSON,

Plaintiff,

v.

ROSSANE CAMPBELL et al,

Defendant.

Case Number: CV07-06136 JSW

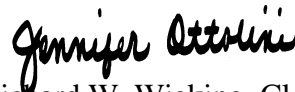
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 10, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Peter Wilson P-79916
Mule Creek State Prison
A3-142
P.O. Box 409099
Ione, CA 95640

Dated: December 10, 2007



Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk